United Nations CCPR/C/BIH/CO/3

International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the third periodic report of Bosnia and Herzegovina*

1. The Committee considered the third periodic report submitted by Bosnia and Herzegovina (CCPR/C/BIH/3) at its 3351st and 3352nd meetings (see CCPR/C/SR.3351 and 3352), held on 14 and 15 March 2017. At its 3364th meeting, held on 23 March 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee is grateful to the State party for having accepted the simplified reporting procedure and for submitting its third period report in response to the list of issues prior to reporting prepared under that procedure (CCPR/C/BIH/QPR/3). It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative measures taken by the State party:

(a) The adoption in 2016 of the Law on Amendments to the Law on Prohibition of Discrimination;

(b) The adoption in 2015 of the Law on Aliens;

(c) The adoption in 2016 of the Law on Asylum;

(d) The adoption in 2015 of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina;

(e) The adoption in 2016 of the Law on Provision of Legal Aid.

4. The Committee also welcomes acceptance of the individual complaint procedure under the International Convention for the Protection of All Persons from Enforced Disappearance on 12 December 2012.

* Adopted by the Committee at its 119th session (6-29 March 2017).

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C. Principal matters of concern and recommendations

Constitutional and legal framework

5. The Committee is concerned that the full implementation, at both the legislative and administrative levels, of the rights enshrined in the Covenant throughout the territory of the State party is hindered due to the complexity of the State party's constitutional structure and the difficulties of the central Government to carry out legal reforms in some parts of the State party (arts. 2 and 50).

6. **The State party should ensure that the provisions of the Covenant are implemented in all parts of the federal State and within its jurisdiction, without any limitation or exception, in accordance with articles 2 and 50 of the Covenant and general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. It should engage with stakeholders at all levels to identify ways to give greater effect to the Covenant at the federal, entity and municipal levels, taking into account that the obligations under the Covenant are binding on the State party as a whole, and that all branches of the government and other public and governmental authorities at every level are in a position to engage the responsibility of the State party.**

Implementation of the Covenant

7. The Committee expresses its concern at the State party's failure to implement the Committee's Views under the Optional Protocol to the Covenant, and of the absence of a mechanism in the State party to implement both the Views and recommendations of the Committee (art. 2).

8. **The State party should take all necessary institutional and legislative measures to ensure the full implementation of the Views adopted by the Committee so as to guarantee the right of victims to an effective remedy, and to establish an effective national mechanism for following up on the Committee's recommendations and Views.**

National human rights institution

9. The Committee regrets that, despite the Government's efforts to bring the Law on Ombudsperson for Human Rights in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and to establish its mandate as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, the draft amendments to this Law have not been approved by the Parliamentary Assembly. The Committee is concerned that the lack of financial autonomy and independence of the Office of the Ombudsperson hinders the full implementation of the Office's mandate in the promotion and protection of human rights in the State party (art. 2).

10. **The State party should strengthen its efforts to ensure that the Office of the Ombudsperson enjoys financial autonomy and adequate financial and human resources, in order to function effectively, in compliance with the Paris Principles.**

Participation in public affairs

11. The Committee recalls its previous recommendations (see CCPR/C/BIH/CO/1, para. 8, and CCPR/C/BIH/CO/2, para. 6) and reiterates its concern that the Constitution and Election Law of the State party continue to exclude persons not belonging to one of the State party's "constituent peoples", (Bosniaks, Croats and Serbs), from being elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. The Committee regrets that, notwithstanding its previous recommendations and the judgments of the European Court of Human Rights, legislative efforts to amend the State Party's electoral framework continue to stall. The Committee is also concerned at reports of widespread corruption and impunity among public officials that obstructs effective participation in public life (arts. 2 and 25-26).

12. **The State party should adopt an electoral system that guarantees equal enjoyment of the rights of all citizens under article 25 of the Covenant, irrespective of ethnicity. In that regard, the State party should, as a matter of urgency, amend its Constitution and Election Law to remove provisions that discriminate against citizens from certain ethnic groups by preventing them from fully participating in elections. The State party should step up its efforts to combat corruption, particularly among government figures, to ensure effective participation in public life.**

Prosecution for crimes against humanity and other international crimes and protection of victims and witnesses

13. The Committee reiterates the concern expressed in its previous concluding observations (see CCPR/C/BIH/CO/2, para. 7) about the slow pace of prosecuting for international crimes committed during the conflict. The Committee notes that the goal of completing the investigation and prosecution of the most complex cases by the end of 2015, as foreseen in the National War Crimes Processing Strategy, has not been achieved (arts. 2, 6-7 and 14).

14. **The State party should expedite the prosecution for crimes against humanity and other international crimes and continue to provide adequate support, including psychological support, and protection to victims and witnesses of those crimes, particularly those related to sexual violence. The State party should also make the system of free legal aid fully operational throughout its territory and available to all vulnerable citizens, including victims of wartime sexual violence, and provide for an effective victims and witnesses protection programme.**

15. While welcoming the adoption of amendments to the Criminal Code of Bosnia and Herzegovina aimed at bringing the definitions of torture and other international crimes in line with international standards, the prescribing of a new autonomous crime of enforced disappearance and the encouraging of planned amendments to remove amnesty for international crimes, the Committee is concerned that, in prosecuting crimes committed during the conflict, the entity-level courts and Brcko District Court continue to rely on the Criminal Code of the former Socialist Federal Republic of Yugoslavia, which does not define crimes against humanity, sexual slavery, enforced pregnancy and command responsibility (arts. 2 and 6-7).

16. **The State party should ensure that there is no impunity for international crimes. It should also ensure that judicial authorities in all entities pursue efforts aimed at harmonizing jurisprudence on crimes committed during the conflict, and apply the law in a manner consistent with the applicable international legal standards.**

Access to justice and reparation of war victims

17. While welcoming the recent decisions of the State party's courts to award financial compensation to victims of wartime sexual violence in criminal proceedings, the Committee is concerned about opinions of the Constitutional Court that the statute of limitations may apply to compensation claims for non-material damage and thus limit the ability of victims to effectively claim compensation. It is also concerned that the majority of victims are required to claim compensation in civil proceedings without adequate protection. It is further concerned about the State party's failure to adopt the draft law on the rights of the victims of torture, the draft programme for women victims of wartime rape, sexual abuse and torture, the draft programme for victims of sexual violence, and the strategy on transitional justice that provide a comprehensive platform to ensure effective access to remedies for all civilian victims of war. The Committee remains concerned that personal disability benefits received by civilian victims of war remain significantly lower than those received by war veterans, and that a further disparity exists between veterans in different entities and municipalities (arts. 2, 7 and 26).

18. **The State party should urgently adopt legislative and practical measures to ensure that survivors of torture and sexual violence have access to effective remedies. It should also harmonize disability benefits among entities and municipalities so that**

personal disability benefits received by civilian victims are comparable to personal disability benefits received by war veterans.

Enforced disappearance and missing persons

19. While welcoming the establishment of a central register of missing persons, the Committee regrets that the verification process has not been completed within the timeline set in accordance with the Law on Missing Persons. It is also concerned at the budget cuts for the Missing Persons Institute. The Committee is further concerned about the failure to establish a fund for support to families of missing persons notwithstanding numerous decisions of the Constitutional Court in this regard (arts. 2 and 6-7).

20. **The State party should expedite the investigation of all unresolved cases involving missing persons. Furthermore, it should take all measures necessary to ensure that the Missing Persons Institute is adequately funded and able to fully implement its mandate with a view to resolving those cases as foreseen in the Law on Missing Persons. The State party should, as a matter of urgency, establish a fund for support to families of missing persons to provide adequate support to families of missing persons.**

Hate crimes and hate speech

21. The Committee remains concerned about reports of racially motivated verbal and physical attacks against members of ethnic groups and religious and national minorities. It is also concerned about reports of the pervasive use of hate speech, especially in the media and on the Internet. It regrets that the legislation in place does not cover all grounds of discrimination and does not specifically address the issue of hate speech on the Internet. It also regrets that only a small number of hate crimes are effectively prosecuted (arts. 2, 20 and 26).

22. **The State party should strengthen its efforts to combat acts of racial or religious hatred. It should redouble its efforts to combat hate speech, including on the Internet, in accordance with articles 19 and 20 of the Covenant and the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. The State party should also amend its legislation on hate speech so as to include all grounds of discrimination under the Covenant. Furthermore, it should investigate hate crimes and ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions and that the victims are provided with adequate remedies.**

Ethnic segregation at schools

23. The Committee notes with concern that, despite some progress made, the practice of "two-schools-under-one-roof" and mono-ethnic schools still exists in some parts of the State party, perpetuating ethnic segregation and discrimination within the education system and undermining reconciliation efforts (arts. 2 and 26).

24. **The State party should continue its efforts in ensuring the functioning of an inclusive educational system without any form of discrimination and segregation in practice, including ethnicity or religion.**

Gender discrimination

25. While welcoming the adoption of amendments to the Law on Prohibition of Discrimination and an annual plan for the implementation of the gender action plan, the Committee is concerned about the persistent low rates of participation of women in political life and in the labour market. It is also concerned about reports that police officers do not investigate attacks against lesbian, gay, bisexual and transgender persons, especially during public assemblies (arts. 2-3 and 26).

26. **The State party should redouble its efforts to increase the representation of women in political life and to fully integrate them in the labour market. It should also ensure effective identification, recording, investigation, prosecution and adequate punishment of acts of violence motivated by sexual orientation or gender identity of**

victims, and intensify its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by providing training to law enforcement officials.

Domestic violence

27. The Committee is concerned about reports that domestic violence is a persistent and underreported problem, that data collection is insufficient, that the police response to cases of domestic violence and the mechanisms to protect and support victims are inadequate and that there is insufficient local access to shelters (arts. 2-3, 7 and 26).

28. **The State party should ensure that cases of domestic violence are recorded and thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective remedies and means of protection, including an adequate number of shelters available in all parts of the country. Furthermore, the State party should ensure that police officers, prosecutors and judges receive appropriate training to effectively deal with cases of domestic violence.**

Liberty and security of person

29. While welcoming new developments in the area of detention, including the adoption of the Law on Foreigners and the establishment of the Institute for Forensic Psychiatry, the Committee remains concerned about reports of ill-treatment and harsh conditions in some police stations and detention facilities and about the lack of units for minors in pretrial detention. It also regrets the lack of information with respect to allegations of ill-treatment of detainees following the February 2014 demonstrations. The Committee is also concerned about the current restrictions placed on Imad Al-Husin and Zeyad Khalaf Hamadie Al-Gertani following their arbitrary detention and the failure to provide redress to both individuals (see communication No. 1955/2010 with respect to Mr. Al-Gertani) (arts. 7, 9-10 and 12).

30. **The State party should increase its efforts to improve the treatment of persons deprived of their liberty and conditions of detention, and promote the use of alternatives to detention. It should ensure that all persons deprived of their liberty have effective access to complaints procedures, that complaints of ill-treatment are effectively investigated and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are adequately compensated. The State party should also ensure separation of minor and adult detainees during all stages of deprivation of liberty. Furthermore, the State party should ensure that individuals are not subject to unjustifiably severe restrictions on the right to freedom of movement and are provided with redress for periods of arbitrary detention.**

Protection of minors and the rights of the child

31. While noting that the Action Plan for Children of Bosnia and Herzegovina (2015-2018) envisages the adoption of laws prohibiting corporal punishment of children in all settings, the Committee is concerned that corporal punishment continues, especially in the home. The Committee is further concerned at reports suggesting that some children with disabilities remain outside the education system altogether (arts. 6, 24 and 26).

32. **The State party should take practical steps, including through legislative measures, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects. Special efforts should be invested in integrating all children with disabilities in regular schools and in special schools where absolutely necessary.**

33. The Committee is concerned about the practice of arranged marriages involving Roma minors, including those between the ages of 12 and 14 years, and the reluctance of prosecutors to investigate cases that may involve child trafficking and to prosecute offenders (arts. 8 and 24).

34. **The State party should implement programmes specifically designed to reduce the incidence of child marriages and train prosecutors to investigate cases of early marriage linked to the trafficking in persons.**

Refugees and displaced persons

35. While welcoming the State party's efforts towards closing collective centres for internally displaced persons and providing them with alternative housing, the Committee remains concerned that returnees and internally displaced persons continue to face discrimination, including in employment and education, which hampers their reintegration into society. It is further concerned at reports that persons granted subsidiary international protection do not receive access to services on an equal basis with refugees (arts. 12 and 26).

36. **The State party should strengthen its efforts to fully implement the revised strategy for the implementation of annex VII to the Dayton Peace Agreement to facilitate reintegration of returnees and internally displaced persons and enjoyment of their rights without discrimination. It should also continue its efforts to close collective centres and provide internally displaced persons with alternative housing solutions and ensure that persons granted with international subsidiary protection receive access to services on an equal basis with refugees, including for family reunification and travel documents.**

Freedom of opinion and expression

37. The Committee is concerned about reports of harassment and intimidation of journalists, and that the media continues to be subjected to excessive influence from governments, political parties and private interest groups, and of the political and financial pressures faced by public broadcasters from the Government, which leads to self-censorship and subjective reporting. It takes note with concern that the Law on Freedom of Access to Information has not yet been fully implemented (arts. 17 and 19).

38. **The State party should fully guarantee freedom of expression and freedom of the press and the media, and access to information. It should thoroughly investigate all incidents of attacks on journalists and the media, and bring those responsible to justice and, if convicted, impose appropriate penalties. The State party should take measures to ensure that public broadcasting is not vulnerable to political influence.**

Rights of persons belonging to ethnic, religious or linguistic minorities

39. While welcoming the efforts made by the State party to eliminate discrimination against the Roma, including improvements in birth registration among the Roma population and increased enrolment of Roma children in schools, the Committee remains concerned about persistent de facto discrimination with respect to Roma children accessing education,, high unemployment rates and the lack of access to adequate housing (arts. 2, 24 and 26-27).

40. **The State party should continue its efforts to ensure birth registration of all persons on its territory, particularly the Roma people, and to tackle de facto discrimination of the Roma through practical measures, programmes, incentives and awareness-raising initiatives to ensure full enjoyment of all their rights under the Covenant.**

D. Dissemination and follow-up

41. The State party should widely disseminate the Covenant, its Optional Protocol, its third periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country and the general public. The State party should ensure that the report and the present concluding observations are translated into the official languages of the State party.

42. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year of the adoption of the present concluding

observations, information on the implementation of the recommendations made by the Committee in paragraphs 14 (crimes against humanity and other international crimes), 20 (enforced disappearance and missing persons) and 36 (refugees and displaced persons) above.

43. The Committee requests the State party to submit its next periodic report by 29 March 2022. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course. The State party's replies to that list will constitute its fourth periodic report. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.